

## REMARKS

### Status of Claims

Claims 1-22, 24-28, and 30-41 are pending in the present application. In the above amendment, claims 1, 7, 26-26 and 30-31 have been amended. Claims 1, 7, 14, 19, 22, 27, 32, 34, 36, and 39 are the independent claims of the application.

### Allowable Subject Matter

Applicants gratefully acknowledge the notification of allowable subject matter in claims 5-6 and 11-13.

### Non-Statutory Double Patenting Rejections

In the Office Action, claims 1, 5-7 and 11-13 were rejected under the judicially create doctrine of obviousness-type double patenting as being allegedly unpatentable over claims of US Patent 7,072,628.

A Terminal Disclaimer in compliance with 37 CFR 1.321(c) is herewith submitted, thereby overcoming the rejections. Accordingly, reconsideration and withdrawal of the rejections is respectfully requested.

### Claim Objections

Claims 25-26 and 30-31 have been amended to correct typographical errors, thereby obviating the objections. Accordingly, reconsideration and withdrawal of the objections is respectfully requested.

### Art Rejections

The Office Action rejected claims 1-4 and 7-10 under 35 U.S.C. § 102(b) as being anticipated by Rich, U.S. Patent Number 5,940,452 (“Rich” in this document). The Office Action further rejected claims 14-41 under 35 U.S.C. § 103(a) as being unpatentable over Rich in view of Willey, U.S. Patent Number 6,505,058 (“Willey”).

Applicants respectfully traverse the rejections.

Claims 1 and 7 have been further amended to clarify what the Applicants regard as their invention, by slightly modifying the syntax of the claims without changing the scope of the claims.

Independent claim 1 now recites “a receiver, using a plurality of receiver chains adapted for processing in the receiver,” and “a control system for controlling receive diversity of said receiver by selecting a number of said plurality of receiver chains.”

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). (Both *Verdegaal* and *Richardson* cases are quoted with approval in MPEP § 2131.)

Applicants incorporate herein by reference the arguments presented in their previous response and submit that Rich also fails to disclose “a receiver, using a plurality of receiver chains adapted for processing in the receiver,” and “a control system for controlling receive diversity of said receiver by selecting a number of said plurality of receiver chains.”

The apparatus shown in Figure 1 is a switched antenna diversity apparatus with a single receiver 126. Rich, col. 4, lines 20-31; *id.* Fig. 1. The controller 108 of this embodiment “selectively couples one of only the first antenna to the receiver, only the second antenna to the receiver, and both the first antenna and the second antenna to the receiver responsive to a received signal generated by the receiver.” Rich, col. 4, lines 26-30; see also *id.* col. 7, line 65 through col. 8, line 3; *id.* col. 9, lines 19-36; *id.* col. 10, lines 1-13; *id.* col. 11, lines 4-9; col. 13, lines 17-20; *id.* col. 20, lines 27-37; *id.* Fig. 2, steps 206, 210, and 212; and *id.* Fig. 6, steps 602, 608, 616, and 622. In Figure 1, Rich discloses changing the number of antennae, not the number of receiver chains. Even assuming that the receiver 126 represents a receiver chain, Rich does not disclose more than a single receiver chain in this embodiment.

Regarding the embodiments of Figures 8, 9, and 10, Rich states that the diversity receiver may be a switched antenna diversity receiver or a selection diversity receiver, described in relation to Rich’s Figures 1 and 7. Rich, col. 25, lines 18-27; *id.* col. 27, lines 48-53; and *id.* col. 28, lines 33-40. As discussed above, Rich does not disclose selecting the number of receiver

chains in either the apparatus of Figure 1 or the apparatus of Figure 7. Rich also states that the diversity receiver 812 of Figures 8-10 may be a maximal ratio combining diversity (MRCD) receiver, such as described in Rich's background section. Rich, col. 25, lines 28-32; *id.* col. 27, lines 48-53; and *id.* col. 28, lines 33-40. Rich does not disclose selecting the number of receiver chains in an MRCD receiver, or changing the number of receiver chains based on a determined channel condition.

The embodiment illustrated in Figure 11 of Rich is a switched antenna apparatus. Rich, col. 29, lines 12-14. Rich shows this apparatus as having a single receiver 126. Even assuming that the receiver 126 represents a receiver chain, Rich does not disclose more than a single receiver chain in the apparatus of Figure 11.

Applicants respectfully submit that Rich does not anticipate independent claim 1 at least because Rich fails to disclose controlling receive diversity by selecting a number of receiver chains based on a determined channel condition.

Independent claim 7 recites limitations similar to those discussed above in relation to claim 1. Applicants respectfully submit that Rich fails to anticipate claim 7 at least for the same reasons as apply to claim 1.

In rejecting independent claims 14, 19, 22, 27, 32, 34, 36, and 39, the Office Action asserted that Rich discloses all the limitations of these claims, save for determining a data bit. Each of these claims now recites limitations similar to those discussed above in relation to claim 1, such as determining receive diversity based on a channel condition. As discussed above in relation to claim 1, Rich does not disclose or suggest these limitations. Willey also fails to teach or suggest these limitations. (The Office Action does not assert that Willey teaches or suggests these limitations.) At least for these reasons, Applicants respectfully submit that claims 14, 19, 22, 27, 32, 34, 36, and 39 are patentable over Rich and Willey.

**REQUEST FOR ALLOWANCE**

In view of the foregoing, Applicants submit that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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By: /François A. Pelacz/  
François A. Pelacz, Reg. No. 57,838  
(858) 651-5802

QUALCOMM Incorporated  
5775 Morehouse Drive  
San Diego, California 92121  
Telephone: (858) 651-4125  
Facsimile: (858) 658-2502